

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CASEY CUNNINGHAM et al.,

Plaintiffs,

v.

CORNELL UNIVERSITY et al.,

Defendants.

Civil Action No. 1:16-cv-06525-PKC

Hon. P. Kevin Castel

CORNELL DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Cornell University, the Retirement Plan Oversight Committee, and Mary G. Opperman (collectively, the “Cornell Defendants”) submit this Notice of Supplemental Authority to bring to the Court’s attention three recent decisions resolving motions to dismiss copycat complaints against other universities.

In *Sweda v. University of Pennsylvania*, 2017 WL 4179752 (E.D. Pa. Sept. 21, 2017), attached hereto as Exhibit A, the district court dismissed all of plaintiffs’ claims with no leave to attempt further amendments, including Schlichter, Bogard & Denton LLP’s cookie-cutter duty of prudence claims that (1) Penn improperly “locked in” certain TIAA investment options and TIAA’s recordkeeping platform; (2) Penn should have used one recordkeeper instead of two (TIAA and Vanguard) and flat, per-person recordkeeping fees rather than asset-based fees; (3) Penn offered funds with unnecessary layers of fees; (4) Penn offered too many investment options; and (5) Penn selected poorly performing investments. The court also dismissed the plaintiffs’ prohibited-transaction claims based on the same arguments.

In *Daugherty v. The University of Chicago*, No. 1:17-cv-03736 (N.D. Ill. Sept. 22, 2017), attached hereto as Exhibit B; and *Nicolas v. Trustees of Princeton University*, No. 3:17-cv-

03695-AET-DEA (D.N.J. Sept. 25, 2017), attached hereto as Exhibit C, the respective courts issued orders granting in part and denying in part the motions to dismiss.

Dated: September 26, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 26, 2017, a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will provide notice of the filing to all counsel of record.

By: /s/ Brian D. Netter

Brian D. Netter